

## c.) Remarks:

Reconsideration of this application as amended is respectfully requested.

Claims 1, 3, and 4 have been rejected as being unpatentable over Ward in view of Ladwig, claims 8, 9, and 15 have been rejected as being anticipated by Wachi, claims 10-14 have been indicated to be allowable if rewritten in independent form, and claims 5-7 and 16-18 have been allowed. Claims 1, 3, and 4 have been amended to distinguish applicant's invention more clearly over Ward and Ladwig, regardless of whether such patents are considered separately or in combination with one another. Claims 8, 9, and 15 have been amended to distinguish the invention more clearly over the Wachi patent.

Claim 1 has been amended to specify that the opening through the trivet body is encircled by an upstanding, reinforcing flange which extends beyond at least one of the surfaces of the body. The examiner has stated that Ward discloses a body 26, 30 having at least one opening, 30, extending therethrough. According to the patentee, however, the member 30 is not an opening, but instead is a built-in accessory, such as a knife sharpener 30. According to the examiner, the reference character 30 identifies both a body and an opening. However, it is respectfully submitted that the member 30 is neither an opening or a body of the kind recited in claim 1.

Claim 1 also specifies that the opening through the body is encircled by an upstanding reinforcing flange which forms part of the body and extends beyond at least one of the surfaces of the body. The examiner has expressed the view that the opening, 30, of Ward is encircled by an upstanding reinforcing flange 0. Applicant has been unable to find anything in the Ward disclosure corresponding to an upstanding flange 0. If the examiner intended to refer to the part 58 shown in Figures 1 and 5 of Ward, it is not believed to be appropriate to refer to such member as a reinforcing flange of the body member inasmuch as the member 58 is simply the rim of a funnel 54 which prevents the funnel from passing completely through the opening 32 and provides support for tabs 62 for cooperation with retainer

pins 61. It is respectfully submitted that the provision of a rim on a part that is completely separate from the body of the Ward cutting board is neither the same as nor the equivalent of an upstanding reinforcing flange forming part of the body and extending beyond at least one of the surfaces of such body.

The shortcomings of Ward referred to above are neither disclosed nor suggested by Ladwig. Although Ladwig does refer to the forming of his cutting board from a polymer material, claim 1 recites a great deal more than a body formed of thermal insulating material. Accordingly, it is respectfully submitted that, even if the polymer teachings of Ladwig were to be incorporated in the Ward construction, there still would be deficiencies in the combination, as set forth above, in suggesting or meeting the terms of the claim. Accordingly, it is respectfully submitted that claim 1 is allowable over the individual and combined disclosures of Ward and Ladwig.

Each of claims 3 and 4 depends on claim 1 and distinguishes over the latter by reciting certain characteristics of applicant's construction in more detail. Since claim 1 is believed to be allowable, claims 3 and 4 also are considered to be allowable.

The rejection of claims 8, 9, and 15 as being anticipated by Wachi is respectfully traversed. The construction recited in parent claim 8 requires a first body member and a second body member each of which is formed of thermal insulating material having opposite surfaces. The claim also recites means coupling the first body member and the second body member to one another. The coupling means is further recited as comprising a flexible strap having opposite ends joined to first and second retainers. Each of such retainers is required to correspond in construction and comprise a stem having a length at least as great as the thickness of each body member. Each stem also is required to have at opposite ends thereof an enlargement extending both axially and laterally beyond the stem. Further, the claim requires each of the enlargements to be of such size as to extend both axially and laterally beyond its associated opening a distance to overlie an adjacent portion of a surface of the body member. It is respectfully submitted that Wachi cannot be considered in such manner as

to anticipate claim 8.

In support of applicant's position it is submitted that, if the member 22 of Wachi as shown in Figures 3-5 is considered to correspond to the flexible strap, then the legs 22a and 23a must correspond to the stems recited in claim 8. As clearly is shown in Figures 3 and 4 of Wachi, the parts 22a and 23a are not of such size as to extend axially beyond the opening in which they are accommodated. This is important since claim 8 has been amended to specify that the enlargement at each stem is of such size as to extend both axially and laterally beyond the opening through the body a distance to overlie an adjacent portion of a surface of the body member. There clearly is nothing in the disclosure of Wachi which even remotely suggests, much less discloses, wherein both ends of the stems not only extend through the respective openings, but also overlie a portion of the surface of the body member. This simply is a construction which has no counterpart in the reference.

The observations made in connection with the construction shown in Figures 3-5 of Wachi apply equally to the constructions disclosed in Figures 6-8 and 9-14.

Each of claims 9 and 15 depends on claim 8, and, accordingly, should be allowable along with the latter.

Applicant respectfully disagrees with the examiner's characterization that the term "trivet" should not be given patentable weight simply because it occurs in the preamble to the claims. There is a fairly comprehensive discussion in Section 2111.02 of the Manual of Patenting Procedure with respect to the recitation of terms in a claim preamble. That same section refers to Catalina Mktg. Int'l. v. Coolsavings.com, Inc. 62 USPQ 2d 1781 for a discussion of guides exploring the preambles effect on claim scope. It is believed that the manual and the Catalina case clearly support applicant's position that the recitation of a trivet in his claims is a structural recitation, rather than a term which merely recites the purpose of a process or the intended use of a structure, as asserted by the examiner. In any event, it is respectfully submitted that the presence of the term "trivet" in the claims fairly shouts of the impropriety of the examiner's

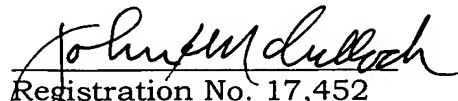
relying upon the Wachi and Ward references, one of which (Wachi) relates to bulletproof clothing and the other of which, Ladwig, relates to a cutting board. It is believed by applicant that anyone seeking solutions to problems relating to trivets hardly would be expected to look to bulletproof clothing and cutting board references for suggestion for such solutions. However, once someone has had the benefit of reading applicant's disclosure, it may be possible to look through all kinds of unrelated arts and pick and choose bits and pieces from such arts and weave a mosaic that has some relevance to the claimed construction. However, this kind of analysis of prior art is based purely on hindsight, a practice which long has been condemned when considering the propriety of relying upon the disclosures of references. The inapplicability of any reliance at all on the Wachi reference becomes more apparent when it is considered that the apparatus 20 is only a portion of a composite construction as clearly is shown in Figure 1 wherein the finished structure comprises the parts 10, 20, 30, 40, and 50. See also column 2, lines 18-26. However, for reasons already pointed out herein, even if Wachi is relied upon, claim 8 still patentably distinguishes over such reference for the reasons set forth above.

This application now is believed to be in condition for allowance. Such action is requested.

The Office is authorized to charge or refund any fee deficiency or excess to Deposit Account No. 50-2676.

Respectfully submitted,

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